Trump v. Vance
___ U.S. ___ (2020)
Vote: 7 (Breyer, Ginsburg, Kagan, Sotomayor, Gorsuch, Kavanaugh, Roberts)
2 (Alito, Thomas)
Opinion of the Court: Roberts
Concurring Opinion: Kavanaugh
Dissenting Opinions: Alito, Thomas

In the summer of 2018, the New York County District Attorney's Office opened an investigation into what it described as "business transactions involving multiple individuals whose conduct may have violated state law." A year later, the office—acting on behalf of a grand jury—served a subpoena *duces tecum* on Mazars USA, LLP, the personal accounting firm of President Donald J. Trump, for financial records relating to the President and his businesses. The President, acting in his personal capacity, sued the district attorney and Mazars in Federal District Court to enjoin enforcement of the subpoena, arguing that a sitting President enjoys absolute immunity from state criminal process under Article II and the Supremacy Clause. Mazars, concluding that the dispute was between the President and the district attorney, took no position on the legal issues raised by the President.

The District Court dismissed the case and, in the alternative, held that the President was not entitled to injunctive relief. The U.S. Court of Appeals for the Second Circuit rejected the District Court's dismissal but agreed with the court's denial of injunctive relief, concluding that presidential immunity did not bar enforcement of the subpoena and rejecting the argument of the United States as *amicus curiae* that a state grand jury subpoena seeking the President's documents must satisfy a heightened showing of need. The President then took his case to the Supreme Court.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

In our judicial system, "the public has a right to every man's evidence." Since the earliest days of the Republic, "every man" has included the President of the United States. Beginning with Jefferson and carrying on through Clinton, Presidents have uniformly testified or produced documents in criminal proceedings when called upon by federal courts. This case involves—so far as we and the parties can tell—the first *state* criminal subpoena directed to a President. The President contends that the subpoena is unenforceable. We granted certiorari to decide whether Article II and the Supremacy Clause categorically preclude, or require a heightened standard for, the issuance of a state criminal subpoena to a sitting President…

[Roberts provided a detailed accounting of Aaron Burr's trial for treason, in which Burr moved for a subpoena directed at President Thomas Jefferson to produce a letter. The prosecution objected on executive privilege grounds ("the letter might contain state secrets"). Chief Justice John Marshall, who presided over the trial as circuit judge, acknowledged that the papers sought by Burr could contain information "the disclosure of which would endanger the public safety," but stated that such concerns would have "due consideration" upon the return of the subpoena. In other words, Jefferson had to comply with the subpoena.[1]]

In the two centuries since the Burr trial, successive Presidents have accepted Marshall's ruling that the Chief Executive is subject to subpoena. … In 1875, President Grant submitted to a three-

[1] Acknowledging that the President may withhold information to protect public safety, Marshall instructed that Jefferson should "state the particular reasons" for withholding the letter. The court, paying "all proper respect" to those reasons, would then decide whether to compel disclosure. But that decision was averted when the misdemeanor trial was cut short after it became clear that the prosecution lacked the evidence to convict.

hour deposition in the criminal prosecution of a political appointee embroiled in a network of tax-evading whiskey distillers…. President Clinton testified three times, twice via deposition pursuant to subpoenas in federal criminal trials of associates implicated during the Whitewater investigation, and once by video for a grand jury investigating possible perjury.

The bookend to Marshall's ruling came in 1974 when the question he never had to decide—whether to compel the disclosure of official communications over the objection of the President—came to a head in *United States* v. *Nixon* (1974), a decision we later described as "unequivocally and emphatically endors[ing] Marshall's" holding that Presidents are subject to subpoena. *Clinton* v. *Jones* (1997).

The *Nixon* Court readily acknowledged the importance of preserving the confidentiality of communications "between high Government officials and those who advise and assist them."… But the Court concluded that the President's "generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial." Two weeks later, President Nixon dutifully released the tapes.

The history surveyed above all involved *federal* criminal proceedings. Here we are confronted for the first time with a subpoena issued to the President by a local grand jury operating under the supervision of a *state* court.

In the President's view, that distinction makes all the difference. He argues that the Supremacy Clause gives a sitting President absolute immunity from state criminal subpoenas because compliance with those subpoenas would categorically impair a President's performance of his Article II functions. The Solicitor General, arguing on behalf of the United States, agrees with much of the President's reasoning but does not commit to his bottom line. Instead, the Solicitor General urges us to resolve this case by holding that a state grand jury subpoena for a sitting President's personal records must, at the very least, "satisfy a heightened standard of need," which the Solicitor General contends was not met here.

We begin with the question of absolute immunity. No one doubts that Article II guarantees the independence of the Executive Branch. As the head of that branch, the President "occupies a unique position in the constitutional scheme." *Nixon* v. *Fitzgerald* (1982). His duties, which range from faithfully executing the laws to commanding the Armed Forces, are of unrivaled gravity and breadth. Quite appropriately, those duties come with protections that safeguard the President's ability to perform his vital functions. See, *e.g.*, *Nixon* v. *Fitzgerald* (concluding that the President enjoys "absolute immunity from damages liability predicated on his official acts"); *United States* v. *Nixon* (recognizing that presidential communications are presumptively privileged).

In addition, the Constitution guarantees "the entire independence of the General Government from any control by the respective States." As we have often repeated, "States have no power . . . to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress." *McCulloch* v. *Maryland* (1819). It follows that States also lack the power to impede the President's execution of those laws.

Marshall's ruling in *Burr*, entrenched by 200 years of practice and our decision in *Nixon*, confirms that *federal* criminal subpoenas do not "rise to the level of constitutionally forbidden impairment of the Executive's ability to perform its constitutionally mandated functions." But the President, joined in part by the Solicitor General, argues that *state* criminal subpoenas pose a unique threat of impairment and thus demand greater protection. To be clear, the President does not contend here that *this* subpoena, in particular, is impermissibly burdensome. Instead he makes a *categorical* argument about the burdens generally associated with state criminal subpoenas, focusing on three: diversion, stigma, and harassment. We address each in turn.

The President's primary contention, which the Solicitor General supports, is that complying with state criminal subpoenas would necessarily divert the Chief Executive from his duties. He grounds

that concern in *Nixon* v. *Fitzgerald*, which recognized a President's "absolute immunity from damages liability predicated on his official acts."

In explaining the basis for that immunity, this Court observed that the prospect of such liability could "distract a President from his public duties, to the detriment of not only the President and his office but also the Nation that the Presidency was designed to serve." The President contends that the diversion occasioned by a state criminal subpoena imposes an equally intolerable burden on a President's ability to perform his Article II functions.

But *Fitzgerald* did not hold that distraction was sufficient to confer absolute immunity…. Indeed, we expressly rejected immunity based on distraction alone 15 years later in *Clinton* v. *Jones*…The Court recognized that Presidents constantly face myriad demands on their attention, "some private, some political, and some as a result of official duty." But, the Court concluded, "[w]hile such distractions may be vexing to those subjected to them, they do not ordinarily implicate constitutional . . . concerns."

The same is true of criminal subpoenas. Just as a "properly managed" civil suit is generally "unlikely to occupy any substantial amount of" a President's time or attention, [t]wo centuries of experience confirm that a properly tailored criminal subpoena will not normally hamper the performance of the President's constitutional duties….

The President next claims that the stigma of being subpoenaed will undermine his leadership at home and abroad. Notably, the Solicitor General does not endorse this argument, perhaps because we have twice denied absolute immunity claims by Presidents in cases involving allegations of serious misconduct. See *Clinton*; *Nixon*. But even if a tarnished reputation were a cognizable impairment, there is nothing inherently stigmatizing about a President performing "the citizen's normal duty of . . . furnishing information relevant" to a criminal investigation…

Finally, the President and the Solicitor General warn that subjecting Presidents to state criminal subpoenas will make them "easily identifiable target[s]" for harassment. But we rejected a nearly identical argument in *Clinton*, where then-President Clinton argued that permitting civil liability for unofficial acts would "generate a large volume of politically motivated harassing and frivolous litigation." The President and the Solicitor General nevertheless argue that state criminal subpoenas pose a heightened risk and could undermine the President's ability to "deal fearlessly and impartially" with the States. *Fitzgerald*. They caution that, while federal prosecutors are accountable to and removable by the President, the 2,300 district attorneys in this country are responsive to local constituencies, local interests, and local prejudices, and might "use criminal process to register their dissatisfaction with" the President. What is more, we are told, the state courts supervising local grand juries may not exhibit the same respect that federal courts show to the President as a coordinate branch of Government.

We recognize, as does the district attorney, that harassing subpoenas could, under certain circumstances, threaten the independence or effectiveness of the Executive. Even so, in *Clinton* we found that the risk of harassment was not "serious" because federal courts have the tools to deter and, where necessary, dismiss vexatious civil suits. And, while we cannot ignore the possibility that state prosecutors may have political motivations, here again the law already seeks to protect against the predicted abuse.

First, grand juries are prohibited from engaging in "arbitrary fishing expeditions" and initiating investigations "out of malice or an intent to harass." …

Second… our holding does not allow States to "run roughshod over the functioning of [the Executive B]ranch." The Supremacy Clause prohibits state judges and prosecutors from interfering with a President's official duties. … We generally "assume[] that state courts and prosecutors will observe constitutional limitations." Failing that, federal law allows a President to challenge any allegedly unconstitutional influence in a federal forum, as the President has done here.

Given these safeguards and the Court's precedents, we cannot conclude that absolute immunity is necessary or appropriate under Article II or the Supremacy Clause…

We next consider whether a state grand jury subpoena seeking a President's private papers must satisfy a heightened need standard. The Solicitor General would require a threshold showing that the evidence sought is "critical" for "specific charging decisions" and that the subpoena is a "last resort," meaning the evidence is "not available from any other source" and is needed "now, rather than at the end of the President's term."…

We disagree, for three reasons. First, such a heightened standard would extend protection designed for official documents to the President's private papers….But this argument does not account for the relevant passage from *Burr*: "If there be a paper in the possession of the executive, which is *not of an official nature*, he must stand, as respects that paper, in nearly the same situation with any other individual."

Second, the Solicitor General [has not] established that heightened protection against state subpoenas is necessary for the Executive to fulfill his Article II functions. Beyond the risk of harassment, which we addressed above, the only justification they offer for the heightened standard is protecting Presidents from "unwarranted burdens." In effect, they argue that even if federal subpoenas to a President are warranted whenever evidence is material, state subpoenas are warranted "only when [the] evidence is essential." But that double standard has no basis in law. For if the state subpoena is not issued to manipulate, the documents themselves are not protected, and the Executive is not impaired, then nothing in Article II or the Supremacy Clause supports holding state subpoenas to a higher standard than their federal counterparts.

Finally, in the absence of a need to protect the Executive, the public interest in fair and effective law enforcement cuts in favor of comprehensive access to evidence. Requiring a state grand jury to meet a heightened standard of need would hobble the grand jury's ability to acquire "all information that might possibly bear on its investigation."…

Rejecting a heightened need standard does not leave Presidents with "no real protection." To start, a President may avail himself of the same protections available to every other citizen. These include the right to challenge the subpoena on any grounds permitted by state law, which usually include bad faith and undue burden or breadth…. Furthermore, although the Constitution does not entitle the Executive to absolute immunity or a heightened standard, he is not "relegate[d]" only to the challenges available to private citizens. A President can raise subpoena-specific constitutional challenges, in either a state or federal forum. As previously noted, he can challenge the subpoena as an attempt to influence the performance of his official duties, in violation of the Supremacy Clause. This avenue protects against local political machinations "interposed as an obstacle to the effective operation of a federal constitutional power." In addition, the Executive can—as the district attorney concedes—argue that compliance with a particular subpoena would impede his constitutional duties. Incidental to the functions confided in Article II is "the power to perform them, without obstruction or impediment." As a result, "once the President sets forth and explains a conflict between judicial proceeding and public duties," or shows that an order or subpoena would "significantly interfere with his efforts to carry out" those duties, "the matter changes." At that point, a court should use its inherent authority to quash or modify the subpoena, if necessary to ensure that such "interference with the President's duties would not occur."

* * *

Two hundred years ago, a great jurist of our Court established that no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding. We reaffirm that principle today and hold that the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need. …

The arguments presented here and in the Court of Appeals were limited to absolute immunity and heightened need. The Court of Appeals, however, has directed that the case be returned to the District Court, where the President may raise further arguments as appropriate.

We affirm the judgment of the Court of Appeals and re- mand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

I agree with the majority that the President is not entitled to absolute immunity from *issuance* of the subpoena. But he may be entitled to relief against its *enforcement*.... I would...apply the standard articulated by Chief Justice Marshall in *Burr*: If the President is unable to comply because of his official duties, then he is entitled to injunctive and declaratory relief...

The *Burr* standard places the burden on the President but also requires courts to take pains to respect the demands on the President's time. The Constitution vests the President with extensive powers and responsibilities, and courts are poorly situated to conduct a searching review of the President's assertion that he is unable to comply...

Courts must...recognize their own limitations. When the President asserts that matters of foreign affairs or national defense preclude his compliance with a subpoena, the Judiciary will rarely have a basis for rejecting that assertion. Judges "simply lack the relevant information and expertise to second-guess determinations made by the President based on information properly withheld."

"[E]ven if the courts could compel the Executive to produce the necessary information" to understand the demands on his time, decisions about that information "are simply not amenable to judicial determination because '[t]hey are delicate, complex, and involve large elements of prophecy.'"

JUSTICE ALITO, dissenting.

A subpoena like the one now before us should not be enforced unless it meets a test that takes into account the need to prevent interference with a President's discharge of the responsibilities of the office. I agree with the Court that not all such subpoenas should be barred. There may be situations in which there is an urgent and critical need for the subpoenaed information. The situation in the Burr trial, where the documents at issue were sought by a criminal defendant to defend against a charge of treason, is a good example. But in a case like the one at hand, a subpoena should not be allowed unless a heightened standard is met…

The point is…that we should not treat this subpoena like an ordinary grand jury subpoena and should not relegate a President to the meager defenses that are available when an ordinary grand jury subpoena is challenged. But that, at bottom, is the effect of the Court's decision.

The Presidency deserves greater protection. Thus, in a case like this one, a prosecutor should be required (1) to provide at least a general description of the possible offenses that are under investigation, (2) to outline how the subpoenaed records relate to those offenses, and (3) to explain why it is important that the records be produced and why it is necessary for production to occur while the President is still in office….

The subpoena at issue here is unprecedented. Never before has a local prosecutor subpoenaed the records of a sitting President. The Court's decision threatens to impair the functioning of the Presidency and provides no real protection against the use of the subpoena power by the Nation's 2,300+ local prosecutors. Respect for the structure of Government created by the Constitution demands greater protection for an institution that is vital to the Nation's safety and well-being.